



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

October 4, 2019

By Electronic Mail

The Honorable Dana M. Sabraw
James M. Carter and Judith N. Keep
United States Courthouse
333 West Broadway
San Diego, CA 92101

RE: *Ms. L v. ICE*, No. 3:18-cv-428-DMS and Plaintiffs' Motion to Enforce Preliminary Injunction, ECF No. 439

Dear Judge Sabraw:

Counsel for the settlement classes in *MMM v. Sessions*, 3:18-cv-1832-DMS (S.D. Cal.) and *Ms. L v. ICE*, No. 3:18-cv-428, including counsel in *Dora v. Sessions*, No. 18-cv-1938 (D.D.C.) (hereinafter "*MMM* and *Dora* counsel"), respectfully submit this letter to the Court pursuant to the Court's invitation during the September 20, 2019 status conference in *Ms. L v. ICE*, 3:18-cv-428. As part of the September 20 status conference, the Court heard argument on the *Ms. L* Plaintiffs' Motion to Enforce Preliminary Injunction, ECF No. 439. The Court inquired during argument about the Government's proposed process for handling parents subject to prosecution under 8 U.S.C. § 1326, as set forth in footnotes 6 and 7 of its Opposition to Plaintiffs' Motion to Enforce Preliminary Injunction, ECF No. 464. In particular, the Court asked whether the Government's proposed process would be objectionable from the perspective of a child's asylum rights and invited *MMM* counsel to notify the Court if they wished to file a brief on the issue. *See* 9/20/2019 Hearing Tr. at 67-69.

Having considered this issue, *MMM* and *Dora* counsel are concerned that the Government's proposal as set forth in footnotes 6 and 7 of its Opposition could lead to the same problems that gave rise to the claims in *MMM* and *Dora*, namely, preventing separated children and their parents from meaningfully exercising their rights to seek relief from removal. *MMM* and *Dora* counsel therefore object to the Government's request that the Court approve its proposed process and/or modify the class-certification order. In the event a parent and child are separated because of prosecution of the parent under 8 U.S.C. § 1326, *MMM* and *Dora* counsel believe that a process in which parents and children jointly decide on reunification, and have the option to reunify for a joint reasonable fear and credible fear screening, would avoid violating parents' and children's rights to seek relief from removal.

October 4, 2019

However, it appears that the central question raised by *Ms. L* Plaintiffs' Motion can be decided without ruling on the narrow question of process raised in footnotes 6 and 7 of the Government's opposition. Accordingly, *MMM* and *Dora* counsel respectfully suggest that the Court defer any ruling on the Government's proposed process until after it has decided *Ms. L* Plaintiffs' Motion. This would give the parties an opportunity to work out the details of an appropriate process – with the input of relevant stakeholders – in light of the Court's decision.

MMM and *Dora* counsel very much appreciate the opportunity express their views on this question. If the Court would like anything more, please let us know.

Sincerely,

/s/ Zachary Best

Zachary Best

Counsel for the Child Settlement Class

/s/ Wilson Barmeyer

Wilson Barmeyer

Counsel for the Parent Settlement Class

/s/ Sirine Shebaya

Sirine Shebaya

Counsel for the Parent Settlement Class

cc: Scott Stewart
Sarah Fabian
Lee Gelernt
Anand Balakrishnan
Catherine Weiss
Justin Bernick